

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

DANNY RAY SESSION	§	
v.	§	CIVIL ACTION NO. 6:05cv316
CHRIS MARTINEZ, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Danny Session, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Session complained of a conviction which he received on February 25, 2005, for delivery of a controlled substance, for which he was given 20 years in prison. He said that he had filed a direct appeal, but had not heard anything from the appellate court; the Magistrate Judge reviewed the on-line records of the Twelfth Judicial District Court of Appeals, which showed that Session's direct appeal was still pending.

On October 4, 2005, the Magistrate Judge issued a Report recommending that Session's federal habeas corpus petition be dismissed without prejudice for failure to exhaust state remedies, as required by 28 U.S.C. §2254(b) and (c). A copy of this Report was sent to Session at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-

to proposed factual findings and legal conclusions accepted and adopted by the district court.  
Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to exhaust state remedies. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**So ORDERED and SIGNED this 27th day of October, 2005.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**